IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 622 of 2015 (C)

PETITIONER(S):

HDO TECHNOLOGIES LTD.,
5/1/2, PHASE I, GIDC VATVA,
GIDC VATVA, AHMEDABAD, GUJARAT,
REPRESENTED BY ITS ASSISTANT GENERAL MANAGER(PRODUCTION),
K.SRINIVASAN.

BY ADV. SRI.M.KRISHNAKUMAR

RESPONDENT(S) :
----

1. **INTELLIGENCE INSPECTOR.**
   SQUAD NO.II COMMERCIAL TAXES.
   KOZHIKODE-673 001, CAMP AT WALAYAR.

2. **INSPECTING ASSISTANT COMMISSIONER,**
   DEPARTMENT OF COMMERCIAL TAXES, WALAYAR- 678 624.

3. **BHARATH PETROLEUM CORPORATION LIMITED,**
   AMBALAMUGAL, KOCHI 682 302, REPRESENTED BY ITS
   SENIOR MANAGER(PROJECTS),

R1 & R2 BY GOVERNMENT PLEADER SRI.RENNY STEPHEN
R3 BY SRI.M.GOPIKRISHNAN NAMBIAR
R3 BY ADVS. SRI.K.I.MAYANKUTTY MATHER
SRI.R.JAIKRISHNA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 622 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: **TRUE COPY OF THE PURCHASE ORDER FROM THE 3RD RESPONDENT DATED 25-09-2013.**

EXHIBIT P2: **TRUE COPY OF THE INVOICE NO.300 DATED 31-02-2014.**

EXHIBIT P2(A): **TRUE COPY OF THE INVOICE NO.301 DATED 31-03-2014.**

EXHIBIT P3: **TRUE COPY OF CONSIGNMENT NOTE GIVEN BY THE TRANSPORTER DATED 10-11-2014.**

EXHIBIT P3(A): **TRUE COPY OF CONSIGNMENT NOTE GIVEN BY THE TRANSPORTER DATED 10-11-2014.**

EXHIBIT P4: **TRUE COPY OF DECLARATION DRAWN BY THE PETITIONER FORM NO.402 DATED 10-11-2014.**

EXHIBIT P4(A): **TRUE COPY OF DECLARATION DRAWN BY THE PETITIONER INFORM NO.402 DATED 10-11-2014.**

EXHIBIT P5: **TRUE COPY OF E-CONSIGNMENT DECLARATION DRAWN BY THE PETITIONER (FORM8F) IN RESPECT OF INVOICE NO.300 DATED 10-11-2014.**

EXHIBIT P5(A): **TRUE COPY OF E-CONSIGNMENT DECLARATION DRAWN BY THE PETITIONER (FORM 8F) IN RESPECT OF INVOICE NO.301 DATED 10-11-2014.**

EXHIBIT P6: **TRUE COPY OF PACKING SLIP IN RESPECT OF INVOICE NO.300 DATED NIL.**

EXHIBIT P6(A): **TRUE COPY OF PACKING SLIP IN RESPECT OF INVOICE NO.301 DATED NIL.**

EXHIBIT 7: **TRUE COPY OF DETENTION NOTICE WAS GIVEN TO THE DRIVERS OF THE TRAILERS DATED 13-12-2014.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K.VINOD CHANDRAN, J

W.P.(C).No. 622 of 2015

Dated 12th January, 2015

JUDGMENT

The petitioner is aggrieved by the detention of goods as is indicated at Ext.P7 notice. The petitioner admittedly had been transporting goods for the 3rd respondent Corporation on the basis of a purchase order from the said respondent for supply of Column Tower Carbon Steel (Naphtha Splitter). The purchase order itself was dated 25.09.2013. The goods were to be installed in the premises of Bharath Petroleum Corporation Limited (BPCL). The invoice itself as indicated at Exts.P2 and P2(a) was issued as early as on 31.03.2014. It is the contention of the petitioner that after the issuance of the invoice, the goods were loaded in the trailer and the delay occurred due to non specification of the site in which it is to be installed. The 3rd respondent had intimated the site and only thus transport originated from Gujarat. On reaching the entry check post, Ext.P7 notice was issued, detaining goods.

2. Two grounds are raised in Ext.P7 notice, for detention of goods; one, delay caused in transporting the goods which were detained at the Walayar check post on 13.12.2013 whereas the invoices were on 31.03.2014. The other ground raised is that, both the invoices contained the same value and obviously the same price is indicated whereas the weight of the goods transported differs. In such circumstances, the value was estimated taking the higher quantity of goods and security deposit demanded.

3. Going by Ext.P7 notice it is not clear as to how the security deposit was demanded since it is not clear as to the exigibility of

tax within the State. The invoices indicate that the transport had been made after paying CST in the State of Gujarat. It is also to be noticed that the CST paid @ 2% indicate C-form transaction. The notice does not contain any infirmity as to the issuance of C-form by the 3rd respondent Corporation.

4. In any circumstances, this Court would not look into these aspects at this point, since definitely adjudication proceedings will have to be conducted by the Department. However, this Court *prima facie* does not find any reason why the petitioner should be asked to pay the security deposit for release of the goods.

5. Heard the learned Standing Counsel appearing for the BPCL also. Only considering the fact that the petitioner is not an assessee within the State, BPCL is directed not to

release the entire amounts due to the petitioner till the adjudication proceedings are over and the amounts as demanded by Ext.P7 notice being Rs.22,99,240/- shall be retained by the BPCL to be adjusted to any penalty or tax imposed on the petitioner.

6. In the above circumstances, there shall be a direction to release the goods expeditiously on the petitioner executing a simple bond for the amounts demanded without sureties and on the BPCL filing an undertaking before the 1st respondent as to the retention of money as directed above.

The writ petition is disposed of.

K.VINOD CHANDRAN
Judge

Mrcs